



CITY OF DURHAM | DURHAM COUNTY
NORTH CAROLINA



Date: December 3, 2012

To: Thomas J. Bonfield, City Manager

Through: Keith Chadwell, Deputy City Manager

From: Steven L. Medlin, AICP, Planning Director *Steven L. Medlin*

Subject: Unified Development Ordinance Text Amendment—Electronic Gaming Operations (TC1200006)

Summary. A recent court ruling has overturned a state statute banning electronic gaming operations (also known as internet sweepstakes), stating that the prohibition was unconstitutional by violating First Amendment protection of free speech. This use is not specifically listed within the Unified Development Ordinance (UDO). A text amendment is warranted to explicitly recognize this use within the Ordinance and establish appropriate land use regulations.

Recommendation. Staff recommends approval. The Planning Commission recommended approval of the text amendment on October 9, 2012, including a separation requirement of 500 feet.

Background. Video gambling has been banned in North Carolina since 2007. Since then, businesses operating gaming products such as video sweepstakes machines (a game one can enter with the opportunity to receive a prize) have arisen. The General Assembly expanded the prohibition to include video sweepstakes and similar devices in 2010. This ban was contested in the courts and the NC Court of Appeals held the ban to be unconstitutional, where the restriction on displaying results through an “entertaining display” was deemed too broad and violated the First Amendment protection of free speech.

The Joint City-County Planning Committee (JCCPC) reviewed the proposed amendment on September 5, 2012, and again on October 3, 2012. A concern was raised regarding the 250-foot separation requirement. JCCPC members expressed concern that the separation distance was insufficient, especially in relation to schools and residential uses. As a result, a separation distance of 500 feet was recommended by the JCCPC.

The Durham Board of County Commissioners considered the amendment on November 26, 2012.

Issues. The current UDO does not specifically list or regulate internet sweepstakes. Since the courts have overturned the ban on such uses, a text amendment to specifically address this use is warranted. The following summarizes the proposed regulations:

1. **Definition.** The proposed definition is the same definition adopted by Southport, NC, and represents a more detailed, but consistent, version of a definition adopted by most other municipalities. This definition was also referenced in the most recent seminar sponsored by the University of North Carolina School of Government (SOG).
2. **Appropriate Use Category.** Indoor Recreation is the most appropriate use category, with similar uses such as bars, nightclubs, and pool halls also listed within the use category. This is also similar to other ordinances and opinions from the SOG.
3. **Zoning District(s) Appropriate for the Use.** The “indoor recreation” use category is primarily restricted to commercial and light industrial zoning districts. The staff recommends that internet sweepstakes be located within these same districts; although certain less intense districts, such as Commercial Neighborhood (CN) or Commercial Infill (CI), should not be included.
4. **Separation Requirements.** Separation standards from incompatible uses such as residential or civic uses (places of worship, schools, daycares, etc.), and from other electronic gaming operations, is proposed. Nightclubs and adult establishments have such separation requirements, and have been used as a model for the proposed standards. In addition, ordinances from other municipalities within North Carolina, as well as documents issued from SOG have also been reviewed.

The proposed separation requirements between other gaming establishments or civic uses are consistent with other ordinances. Typical separation distances start at approximately 500 feet, but also commonly range from 1,000 to 1,600 feet.

Current standards for nightclubs require a 250 foot separation from places of worship, but do not include any separation requirements from other uses. Adult establishments, however, include more use separation requirements similar to those proposed in this draft amendment, and also require a larger separation: 1,000 feet from residential or civic uses, and 2,000 feet from other adult establishments. The attached draft amendment provides for separation from civic uses, residential uses, and other electronic gaming operations, similar to requirements for adult establishments, but with a smaller distance requirement of 500 feet.

5. **Additional Standards Proposed.** Other standards proposed include limitations on signage, outdoor storage, and outdoor activity; a restriction on alcohol sales and consumption; and a restriction on types of lighting visible from the exterior of the premises. These standards are permissible pursuant to SOG documents and have been utilized in various formats in other jurisdictions' ordinances.
6. **Parking.** Staff suggests the parking standard established for other similar uses would be appropriate for this use. The standard would be one space per 100 square feet of floor area. This standard is currently used for nightclubs, bars, adult establishments, and movie theaters.

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Attachments

- Attachment A:** An Ordinance to Amend the Unified Development Ordinance Regarding Electronic Gaming Operations (TC1200006), Mark-up Version
- Attachment B:** An Ordinance to Amend the Unified Development Ordinance Regarding Electronic Gaming Operations (TC1200006), Clean Version
- Attachment C:** Planning Commission Comments